

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHYLLIS J. KING,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. C 08-1919 PJH

**ORDER GRANTING MOTION TO
DISMISS**

The motion of defendant United States of America ("United States"),¹ for an order dismissing the complaint pursuant to federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction, came on for hearing before this court on June 18, 2008. The United States appeared by its counsel Joanne M. Swanson, and plaintiff Phyllis J. King ("King") appeared in propria persona. Having carefully reviewed the parties' papers and considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows and for the reasons stated at the hearing.

The Federal Tort Claims Act ("FTCA") provides that a claim in tort shall not be brought against the United States government for the actions of its employees unless the claimant has first presented the claim to the appropriate federal agency and the claim has been finally denied by the agency. 28 U.S.C. § 2675(a). A claimant must exhaust all administrative remedies prior to filing suit in the district court.

King filed a claim against the Federal Bureau of Investigation ("FBI") in San

¹ Plaintiff brought this action against the Federal Bureau of Investigation. Pursuant to 28 U.S.C. § 1346(b) and 28 U.S.C. § 2679(a), the United States is the only proper defendant.

1 Francisco Superior Court for property damage, intentional tort and premises liability. The
2 United States removed the case to this court. King concedes that she did not file an
3 administrative claim with the FBI before filing suit. The FBI has no record that King ever
4 filed an administrative claim, and there is no record that such a claim was ever denied.
5 Accordingly, this court lacks jurisdiction because King has failed to satisfy the requirements
6 of the FTCA.

7 Therefore, the motion to dismiss all claims against the United States for failure to
8 exhaust administrative remedies is GRANTED without prejudice. King may re-file her
9 claims with this court after she has filed an administrative claim with the FBI and such claim
10 has been denied. If the FBI fails to make a final disposition of the claim within six months,
11 King may treat the failure to act as an administrative denial of her claim. See 28 U.S.C. §
12 2675(a). Any subsequent action filed in this court must name the United States – not the
13 FBI – as a defendant. See Kennedy v. United States Postal Serv., 145 F.3d 1077, 1078
14 (9th Cir. 1993) (per curiam).

15
16 **IT IS SO ORDERED.**

17 Dated: June 23, 2008



18 _____
19 PHYLLIS J. HAMILTON
20 United States District Judge
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PHYLLIS J KING,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Case Number: CV08-01919 PJH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Phyllis J. King
527 Vista Mar Avenue
Pacifica, CA 94044

Dated: June 24, 2008



Richard W. Wieking, Clerk
By: Nichole Heuerman, Deputy Clerk